IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

JUDGMENT

R.S.R.T.C. & Anr. Vs. Ramesh & Ors.

S.B.CIVIL MISC. APPEAL NO.418/1992

Against the common award dated 31.07.1992 made by the Motor Accidents Claims Tribunal, Udaipur relating to Claim Case No.65/1988.

Date of Judgment : 19.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. B.S. Bhati, for the appellants.
Mr. Mahendra Trivedi, for the respondents.

BY THE COURT:

This appeal by the owners of the vehicle of Rajasthan State Road Transport Corporation has been preferred against the common award dated 31.07.1992 made by the Motor Accidents Claims Tribunal, Udaipur in so far it relates to Claim Case No.65/1988 whereby the Tribunal has awarded an amount of Rs.1,30,000/- as compensation to the husband and children of the deceased Smt. Manjula, aged 35

years who died on account of the injuries sustained in a vehicular accident involving the bus of the appellant bearing registration No.RSJ 6212 and a jeep bearing registration No.RJB 693.

On 10.09.1987 the deceased Smt. Manjula and several other occupants were travelling in the aforesaid jeep RJB 693 going from Khamera to Dhariavad; the jeep was hit by the oncoming bus RSJ 6212 belonging to the appellants and driven by the non-applicant No.3 Hari Singh. It appears from the statements of facts made in relation to the different claim cases decided together by the impugned common award that as a result of the accident, two occupants of the jeep Smt. Bharti and Smt. Manjula sustained grievous injuries and both of them succumbed to the injuries whereas another occupant Kumari Sapna sustained simple injuries. Three claim applications were filed seeking compensation against the owner and driver of the offending bus. In Claim Application No. 63/1988 Shri Pradhyuman and minor Kumari Sapna claimed compensation on account of accidental death of Smt. Bharti, aged 25 years, wife and mother of the respective claimants. In Claim Application No.64/1988 Kumari Sapna sought compensation on account of injuries suffered by her. The instant appeal arises out of the third Claim Application No.65/1988 submitted by Shri Ramesh with minors Dipesh

Kumar and Kumari Nitu, respectively the husband and children of deceased Smt.Manjula claiming compensation on account of her accidental death.

The applications aforesaid were put to contest by the owners of the bus, the present appellants, with the submissions that the accident occurred on account of the negligence of the jeep driver who could not control the jeep on a curve and hit against the oncoming bus. Quantum of compensation claimed in each of the cases was also put to contention. The learned Tribunal although framed separate issues in these claim cases, however, proceeded to decide them together being related to the same accident. The Tribunal held that the accident occurred for rash and negligent driving of the bus. While quantifying compensation in each case, the Tribunal awarded a sum of Rs.2,00,000/- in relation to the claim case No.63/1988 to the husband and child of the deceased Smt. Bharti. The Tribunal further awarded a sum of Rs.2,000/- to the injured Kumari Sapna in claim case No.64/1988 as compensation on account of injuries suffered by her.

Taking up the matter relating to the Claim Case No.65/1988, the learned Judge of the Tribunal observed that the deceased was 35 years of age and it was likely that some house-keeper was required to be employed after her death

and loss of consortium to the husband and so also loss of love, affection and support to the children of the deceased cannot be ruled out. Thereafter the learned Judge observed that the amount claimed by the claimants towards non-pecuniary loss was not justified and considered it appropriate to allow Rs.500/- for transportation to hospital and another Rs.250/- for transportation from the hospital and another Rs.1250/- as funeral expenses and then observed that clubbing up the amount for consortium and all the heads, it shall be appropriate in the interest of justice to award a sum of Rs.1,30,000/- as compensation. In this manner, the award in the sum of Rs.1,30,000/- has been made in Claim Case No.65/1988 in favour of the respondent-claimants and against the present appellants.

The appellants seek to question the award on its finding on the question of liability towards accident and so also on its quantification of compensation. However, at the outset, learned counsel for the parties pointed out that another appeal, being S.B.CMA No.416/1992, was submitted by the present appellants against the same award in relation to Claim Case No.63/1988 whereby the Tribunal had awarded a sum of Rs.2,00,000/- to the claimants as compensation on account of accidental death of aforesaid Smt. Bharti; and the said appeal has already been dismissed by this Court on 13.01.1995.

Record of S.B. Civil Misc. Appeal No.416/1992 was requisitioned and it is noticed that in the said appeal against the same award, this Court has found the award not calling for interference and the appeal has, therefore, been dismissed in limine. The order passed by this Court on 13.01.1995 in S.B.Civil Misc. Appeal No.416/1992 reads thus:

> "13.1.95
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> Hon'ble Mr. P.P. Naolekar J.
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> Mr. Ashok Chhangani, for the appellant.
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> That on account of death of Smt. Bharti, aged about 25 years, who was found to have been earning Rs.1700/- per month, the Motor Accident Claims Tribunal has made an award of Rs.2,00,000/-. The said award is challenged in this Court.
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> Looking to the age and the earning of deceased Smt. Bharti, the compensation award of Rs.2,00,000/- is just, appropriate and proper. The judgment does not require any interference by this Court.
>
> The appeal is therefore, dismissed."

Having regard to the aforesaid findings by this Court affirming the award though essentially with reference to the quantum of compensation sought to be challenged in the said appeal, the fact nevertheless remains that it has specifically been observed that the award does not require interference by this Court and the appeal has, therefore, been dismissed. In view of the dismissal of the aforesaid appeal,

not only the quantum of compensation in relation to the said Claim Case No.63/1988 stands affirmed but the other part of the award particularly the findings regarding involvement of the vehicle and the liability towards accident stand concluded against the appellant.

It appears from the aforesaid order dated 13.01.1995 that the appellant has chosen not even to challenge the finding on issue No.1 relating to liability towards accident before this Court and, therefore, such finding regarding liability towards accident cannot be permitted to be questioned now in this appeal against the same award.

Even otherwise, having examined the considerations adopted by the learned Tribunal, this Court is satisfied that the driver of the bus failed to take reasonable care and to lower down the speed while negotiating a curve and hit the rear of the jeep. The involvement of bus in the accident is not at all in doubt and the accident having occurred on account of negligence of the bus driver is also apparent. Further, even if it would have been a case of composite negligence of the bus driver and the jeep driver, so far the victims are concerned, who were the occupants of the jeep, they could have definitely maintained their claim for compensation against either of them. Viewed from any angle, there is no scope of interference in the findings on issue No.1.

Learned counsel Mr. B.S. Bhati appearing for the appellant-Corporation has strenuously contended that the Tribunal has awarded a lump sum of Rs.1,30,000/- in the present case on account of accidental death of Smt. Manjula, a housewife in 35 years of age and such an award as made in the year 1992 remains excessive and deserves suitable modification. Learned counsel submitted that the Tribunal has not applied any principle for quantification and has straightaway awarded an exorbitant amount of Rs.1,30,000/- and has further allowed higher rate of interest at 12% per annum. The deceased being a non-earning person, according to Mr. Bhati, even if some reasonable compensation was to be allowed, it could not have reached a figure of Rs.1,30,000/-. Learned counsel Mr. Mahendra Trivedi appearing for the claimants on the other hand submitted that the award amount is substantially on the lower side and the Tribunal, after considering the transportation charges and funeral expenses, has made a lump sum award and has failed to allow just compensation to the claimants, the husband and children of the deceased who was 35 years in age. Learned counsel Mr. Trivedi with these submissions pressed the cross-objections and contended that the award deserves to be modified with upward revision over the amount of compensation.

Having heard learned counsel for the parties and having perused the impugned award and the record, this Court is clearly of opinion that the award on its quantification of compensation remains on much lower side and the amount of Rs.1,30,000/- cannot be said to be representing a figure of just compensation in the present case. It is of course noticed from the memo of cross-objections submitted in this appeal that the same does not contain relevant grounds and rather it appears that the said memo of cross-objections was essentially intended to be made in relation to Case No.63/1988 pertaining to the other deceased Smt. Bharti. However, such mistake on the part of the claimants, in the opinion of this Court, remains merely a matter of form and even if cross-objections are not submitted, a prayer by the claimants for awarding just compensation while facing an appeal by the non-applicant owner of vehicle cannot be denied merely for such omission; and, depending on circumstances, could be considered in appropriate case. It is noticed from the memo of appeal submitted in the present case the confusion regarding the amount of compensation awarded by the Tribunal in the common award in respective claim cases has carried itself not only in relation to the cross-objections but is spelt out by the memo of appeal too inasmuch as the present memo of appeal states the amount of compensation

awarded at Rs.2,00,000/-. In fact, having examined the memo of appeal in the other decided case i.e. S.B. CMA No.416/1992, it is noticed that the sum of Rs.1,30,000/- as the amount of award of the Tribunal has been stated in the said memo of appeal. Obviously while preferring appeals in the respective cases, the facts have got intermixed at the hands of appellants too. Be that as it may, leaving aside such contradictions as more of form than of substance, this Court is of opinion that a reasonable and just compensation deserves to be allowed to the claimants, husband and children of the deceased Smt. Manjula 35 years in age who was of course a housewife but who met with her untimely end in the accident in question leaving behind her husband in his youth and two minor children, son 16 years and daughter 12 years in age.

Going by the Second Schedule inserted in the year 1994 to the Motor Vehicles Act, 1988, the notional income for a non-earning person could be adopted at Rs.15,000/- per annum. However, in relation to the present case where the accident had occurred in the year 1987 and looking to the set up of the distressed family, it is considered appropriate to take the figure, for the purpose of multiplicand, at Rs.10,000/- per annum. Looking to the age of the claimants and the deceased, it is considered appropriate to apply a

multiplier of 16 to arrive at a pecuniary loss figure of Rs.1,60,000/-; an amount of Rs.10,000/- deserves to be allowed to the husband for loss of consortium; and an amount of Rs.5,000/- each to the children for loss of company and support of their mother and, therefore, the non-pecuniary loss stands at Rs.20,000/-. Providing for the transportation expenses as noticed by the Tribunal and so also for funeral expenses, it is considered appropriate to allow further an amount of Rs.5,000/- to the claimants.

In view of the aforesaid the claimants are entitled to compensation in the sum of Rs.1,85,000/- (1,60,000/- + 10,000/- + 10,000/- + 5,000/-); and the Tribunal having made an award in the sum of Rs.1,30,000/-, the claimants are entitled for a further amount of Rs.55,000/- (1,85,000/- - 1,30,000/-). In view of the enhancement being made herein, it is considered appropriate to allow interest on the enhanced amount @ 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, the appeal filed by the owner of the vehicle fails and is dismissed; the cross-objections are allowed in part and a further award in the sum of Rs.55,000/- is made in favour of the claimants who shall be entitled to interest @ 7.5% per annum on this enhanced amount. The amount now payable under the award shall be

deposited by the appellants with the Tribunal within 30 days and the Tribunal shall carry out apportionment and disbursement in the manner and proportion as contemplated in the impugned award. In the circumstances of the case, the parties shall bear their own costs.

(DINESH MAHESHWARI), J.

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